

IN THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 1. This sheet, which includes Figs. 1-3, replaces the original sheet including Figs. 1-3.

Attachment: Replacement Sheet

REMARKS

Favorable reconsideration of this application as presently amended, and in light of the following discussion, is respectfully requested.

Claims 1-10 are pending in this case. Claims 1-9 have been amended by the present Amendment. Claim 10 is new. Amended Claims 1-9 and new Claim 10 are supported by page 4, lines 20-24, and page 10, lines 8-17 of the specification. No new matter has been added.

In the outstanding Office Action, the drawings were objected to because of informalities. Claims 1-9 were provisionally rejected on obviousness-type double patenting. Claims 1-2 and 5-6 were rejected under 35 U.S.C. § 103(a) as unpatentable over Katsube et al. (U.S. Patent No. 6,188,689; hereinafter "Katsube"). Claim 3 was rejected under 35 U.S.C. § 103(a) as unpatentable over Katsube in view of Imanaka et al. (U.S. Patent No. 6,272,669; hereinafter "Imanaka"). Claim 4 was rejected under 35 U.S.C. § 103(a) as unpatentable over Katsube in view of Mielke et al. (U.S. Patent No. 6,799,037; hereinafter "Mielke"). Claims 7-9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Katsube in view of Lauck et al. (U.S. Patent No. 6,615,271; hereinafter "Lauck").

In response to the objection to the drawings, Applicants have amended Figure 1 in accordance with the suggestion set forth in the outstanding Office Action. Accordingly, Applicants respectfully request the objection be withdrawn.

With regard to the non-statutory double patenting rejection of Claims 1-9 in view Claims 9-17 of U.S. Application No. 10/287,912, the rejection is respectfully traversed in light of the terminal disclaimer submitted herewith.

The filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. The "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double

patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

In response to the rejection of Claims 1-2 and 5-6 under 35 U.S.C. § 103(a) as unpatentable over Katsube, Applicants respectfully submit that amended independent Claim 1 recites novel features clearly not taught or rendered obvious by the applied references.

Amended independent Claim 1 is directed to:

A process for controlling a switched full-duplex Ethernet type communication network including at least one source subscriber equipment and at least one destination subscriber equipment connected to each other through at least a physical link through at least one switch and through at least one virtual link which is a conceptual representation of a link from a source equipment to at least one destination equipment, the process comprising:

in a transmission service, allowing an application to access virtual links in transmission, the transmission service configured to multiplex virtual links to a physical link through an Ethernet interface;

for each virtual link, sending packets as a function of passband allocated to the respective virtual link, the passband of a virtual link being substantially equal to: (packet size)/(minimum inter-packet time), the sum of passbands of the virtual links in transmission being less than about 5Mbits/s;

checking time characteristics of the packets in a passband protection service in the switch, for each incoming virtual link; and

destroying the packets if allowable characteristics are exceeded, to prevent a failure in a transmitter or a virtual link from compromising traffic in other virtual links leaving the switch.

Turning now to the applied reference, Katsube describes a mechanism for determining the next transfer target of a received datalink frame, without frame-packet conversion and

without network layer processing.<sup>1</sup> However, Katsube fails to teach or suggest “for each virtual link, sending packets as a function of passband allocated to the respective virtual link, the passband of a virtual link being substantially equal to: (packet size)/(minimum inter-packet time), the sum of passbands of the virtual links in transmission being less than about 5Mbits/s,” as in Applicants’ amended independent Claim 1.

Page 6 of the outstanding Office Action asserts that Figure 10 of Katsube shows the feature of sending packets as a function of passband allocated to the respective virtual link. However, Figure 10 of Katsube only shows a functional block diagram of routers 341, 342, and 343.<sup>2</sup> Neither Figure 10 nor any other portion of Katsube, describes that *the sum of passbands of the virtual links in transmission is less than about 5Mbits/s*. Thus, it is respectfully submitted that independent Claim 1, and all claims depending therefrom patentably distinguish over Katsube. Further, Applicants respectfully submit that neither Imanaka, Mielke, nor Lauck cure any of the above-noted deficiencies of Katsube.

Accordingly, Applicants respectfully request the rejections of Claims 1-9 under 35 U.S.C. § 103(a), be withdrawn.

In order to vary the scope of protection recited in the claims, new Claim 10 is added. New Claim 10 finds non-limiting support in the disclosure as originally filed, for example at page 4, lines 20-24 .

Therefore, the changes to the claims are not believed to raise a question of new matter.<sup>3</sup>

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

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<sup>1</sup> See Katsube at column 1, lines 55-60.

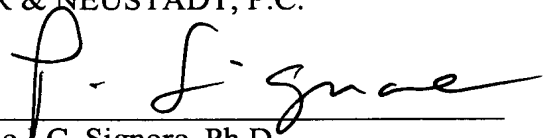
<sup>2</sup> See Katsube at column 9, lines 55-56.

<sup>3</sup> See MPEP 2163.06 stating that “information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter.”

Consequently, in view of the present amendment, and in light of the above discussion, the pending claims as presented herewith are believed to be in condition for formal allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
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A handwritten signature in black ink, appearing to read "P. J. Signore", written over a horizontal line.

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